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SUBJECT: IPR Enforcement Moves Forward in the Philippines

REF: MANILA 4940

11. Summary: The visit of USTR Director for Southeast Asia and the Pacific David Katz provided an opportunity to meet with key players on IPR in the Philippines and assess progress. It appears that legislative progress is only moderate. Important legislation extending copyright protections has been submitted to Congress but will not pass in this session. The Roxas bill, which looked like it would cause serious damage to the patent regime for pharmaceuticals, is likely to pass, but without some of the worst provisions. Enforcement agencies continue to act forcefully against violators of IPR, resulting in some decrease in the availability of violating products. However, prosecution of IPR cases remains severely lacking. While we have high hopes of continued progress in both legislation and enforcement, necessary reform of the judicial process is a long-term and difficult prospect. End Summary.

12. USTR Director for Southeast Asia and the Pacific David Katz visited Manila on November 9 and 10 for regular consultations on trade and IPR issues. Katz met with a wide range of IPR contacts, including three sessions with members of the Senate and the House of Representatives, meetings with representatives of several agencies of the executive branch, and a session with representatives of rights holders.

Making the Case to Congress

13. Katz met with Congressman Junie Cua, Chairman of the Trade and Industry Committee of the House and Senator Ralph Recto, Chairman of the Senate Ways and Means Committee, and hosted a dinner for Congressmen Gilbert Remulla, Jack Duavit, and Luis Villafuerte. The evolution of IPR protections over the past year was the central theme of each meeting, and Katz took the opportunity in each meeting to press USTR concerns about proposed legislation limiting patent protections for pharmaceuticals (the "Roxas bill"). Katz explained in the meetings that the USG did not generally oppose GRP efforts to lower the prices of pharmaceuticals, but would object to legislation that contradicted the GRP's commitments under WTO TRIPS. (Note: Roxas has subsequently agreed to modify the legislation in a way that addresses some of our concerns. See reftel.) Duavit, who is one of six vice chairmen of the House Trade and Industry Committee, was upset at the prospect of legislation contravening TRIPS, and assured Katz that he would support amending the bill.

14. Cua confessed his worries about some slippage in certain aspects of IPR protection, especially in the areas of enforcement and prosecutions. Katz and Cua discussed the prospects for guaranteeing stable funding for agencies working in IPR enforcement. They also discussed legislation Cua is sponsoring that would incorporate the WIPO Copyright Treaties into Philippine legislation. Cua did not

believe time remained for Congress to pass the legislation this year.

Encouraging the Executive Branch

15. Katz met with the leadership of all the key enforcement agencies: the Intellectual Property Office, Optical Media Board, Philippine National Police, and Customs. Adrian Cristobal, Director General of the Intellectual Property Office, described enforcement efforts, especially an increasing number of raids and seizures. He discussed a forthcoming memorandum of understanding with the US Patent and Trademark Office regarding training opportunities for IPO officials, and cited a realignment at the Department of Justice as increasing the number of prosecutors (while remaining tentative as to whether it would make a difference in the number and quality of prosecutions). Edu Manzano, Chairman of the Optical Media Board, described his agency's successful raids and increased seizures. He also highlighted the success other countries have had with forensic testing facilities that enable investigators to establish the origins of pirated products, and urged that one be procured for the use of GRP agencies (an idea Post is pursuing). The head of the Anti-Fraud and Commercial Crimes Division of the Philippine National Police, Noel de los Reyes, complained that rights holders often do not lodge complaints necessary for PNP action. Celso Templo, Deputy Director of the Customs Bureau, pointed to seizures of counterfeit Chinese garments in the process of transshipment to US ports. He described the proposal for Customs reform currently before the Department of Trade and Investment, which would convert the IPR unit of Customs into a permanent bureau with greater resources and permanent personnel.

Challenge of IPR Prosecutions

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16. All representatives of the enforcement agencies expressed (albeit diplomatically) frustration with the justice system. While raids are conducted and illegal product seized, lack of cooperation from rights holders often makes prosecution, and sometimes even retention of seized goods, impossible. Even when prosecution would seem possible, it rarely moves forward successfully.

17. Katz met with Assistant Chief State Prosecutor Pedrito Rances at the Department of Justice and with Supreme Court staff to discuss these issues. The meetings demonstrated that the justice system remains the most problematic aspect of defense of IPR in the Philippines. Rances oversees a task force of 16 prosecutors within the Department of Justice who work on IPR investigations. While more than 900 arrest warrants have been issued in the past several years, few actual prosecutions have been undertaken and only eight are presently active. Even fewer convictions have resulted. Rances said that many arrest warrants are "archived," meaning that the police do not even act on them. In those cases where an arrest has been made, prosecutors encounter difficulties in arranging court appearances by witnesses (often police officers), and IPR holders must pay to store pirated materials for years as a case evolves (or does not evolve). As a result, many complainants settle their cases out of court or decline to file complaints in the first place. Asked how much of the time of his prosecutors is devoted to IPR cases, Rances was unable to answer, though he agreed with a suggestion of "maybe about 10%."

18. Rances presented Katz with a list of 16 IPR convictions that have taken place since 2000, but was unable to provide information about sentences that were imposed, or indicate whether fines were paid or if those sentenced remained in prison. Notably, the list included Catherine Marquez, sentenced to prison in 2004 for book piracy, who jumped bail while her case was on appeal, remains at large, and is understood to remain active in illegal photocopying.

Comment:

19. Although our allies in the executive branch and Congress are

working hard and have some accomplishments to tout, serious weaknesses remain in the Philippine IPR regime. Aggressive enforcement measures have made selling pirated goods a more high-risk activity, and while malls and shopping centers still have fakes on offer, sellers have become much more discreet. However, the justice system remains a weakness whose effects can be felt not only in IPR protection but also in numerous economic issues. The existing system is one in which police and prosecutors do not work together, adequate investigations do not take place, and only seven percent of all prosecutions result in convictions. While the embassy is engaged on various fronts attempting to remedy this problem, it is the work of years and perhaps decades and is not susceptible to quick fixes.

Kenney